

**\*\* E-filed January 6, 2012 \*\***

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

MIKE GELLER AND MIKE YARBROUGH  
 AS TRUSTEES OF THE INTERNATIONAL  
 BROTHERHOOD OF ELECTRICAL  
 WORKERS LOCAL 302 HEALTH AND  
 WELFARE AND PENSION TRUST FUNDS,

Plaintiffs,

BANISTER ELECTRICAL, INC., A California  
 Corporation,

Defendant.


CASE NO.: CV11-0899 HRL

REQUEST FOR CONDITIONAL  
 DISMISSAL PENDING PAYMENT IN  
 FULL UNDER SETTLEMENT  
 AGREEMENT AND ORDER  
 THEREON

All parties having appeared and executed a Stipulation for Entry of Judgment, the parties hereby request that the Court order a conditional dismissal of the entire action. The dismissal is conditional upon payment in full under the Stipulation for Entry of Judgment attached hereto as Exhibit "A". The court shall retain jurisdiction in this matter. In the event Defendant defaults in performance of the terms of the Stipulation for Entry of Judgment, judgment shall be entered upon ten (10) days' written notice to Defendant, and a declaration filed by Plaintiffs' attorney as to default by the Defendant. Pursuant to the stipulation of the parties, the judgment to be entered shall be for contributions for June 2011 - September 2011, plus the balance owed in liquidated damages for the periods: January - May 2010, July 2010 - March 2011, May 2011 in

1 the amount of \$60,755.92, attorney's fees of \$1,843.00, Costs of \$350.00, plus current  
2 contributions due, less any amounts paid in accordance with the Stipulation for Entry of  
3 Judgment.

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6 Dated: 9/19/2011

  
SUE CAMPBELL  
Attorney for Plaintiffs

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9 Dated: 9/19/11

BANISTER ELECTRICAL, INC., A  
California Corporation

10  
11 BY: 

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14 **ORDER (MODIFIED BY THE COURT)**

15 In accordance with the settlement and request of the parties, and good cause  
16 appearing therefor,

17 IT IS HEREBY ORDERED that a conditional dismissal with prejudice of the  
18 entire action be entered. The dismissal is conditional upon payment in full under the Stipulation  
19 for Entry of Judgment attached hereto as Exhibit "A" for contributions for June 2011 -  
20 September 2011, plus liquidated damages for the periods: January - May 2010, July 2010 -  
21 March 2011, May 2011. The Court shall retain jurisdiction over this matter. In the event  
22 Defendant defaults in performance of the settlement agreement or payment schedule, and upon  
23 ten (10) days' written notice to Defendant, and a declaration filed by Plaintiffs' attorney as to  
24 default by the Defendant, pursuant to the parties' stipulation, the Court authorizes entry of  
25 judgment for the balance owed in contributions for June 2011 - September 2011, plus liquidated  
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1 damages for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount  
2 of \$60,755.92, attorney's fees of \$1,843.00, Costs of \$350.00, plus current contributions due,  
3 less any amounts paid in accordance with the Stipulation for Entry of Judgment. The clerk shall  
4 close the file. It may be re-opened on application by a party contemporaneously with a request  
5 to enter judgment pursuant to the stipulation for entry of judgment.

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8 Dated: January 6, 2012

  
HOWARD R. LOYD  
United States Magistrate Judge

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4 Attorney for Plaintiffs  
5  
6

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 MIKE GELLER AND MIKE YARBROUGH  
AS TRUSTEES OF THE INTERNATIONAL  
11 BROTHERHOOD OF ELECTRICAL  
WORKERS LOCAL 302 HEALTH AND  
12 WELFARE AND PENSION TRUST FUNDS,

13 Plaintiffs,

14 BANISTER ELECTRICAL, INC., A California  
Corporation,

15 Defendant.  
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CASE NO.: CV11-0899 HRL

STIPULATION FOR ENTRY OF  
JUDGMENT, JUDGMENT PAYABLE  
IN INSTALLMENTS

(AS MODIFIED BY THE COURT)

18 IT IS HEREBY STIPULATED and agreed by and between Plaintiffs MIKE  
19 GELLER AND MIKE YARBROUGH as trustees and fiduciaries of the INTERNATIONAL  
20 BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE  
21 AND PENSION TRUST FUNDS. (hereinafter referred to as "TRUST FUNDS") and Defendant  
22 BANISTER ELECTRICAL, INC., A California Corporation, ("BANISTER") as follows:

- 23 1. BANISTER shall make all payments on contributions due and unpaid to the  
24 TRUST FUNDS for the months: June 2011 - September 2011 by October 15,  
25 2011 as follows:

26 A. The amount due for the month: June 2011 in the amount of \$14,187.04 shall  
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January 30, 2012 if not already paid  
be paid by ~~October 15, 2011~~.

B. The amount due for the month: July 2011 in the amount of \$12,945.14 shall be paid by ~~October 15, 2011~~.  
January 30, 2012 if not already paid

C. The amount due for the month: August 2011, due September 15, 2011 shall be paid no later than ~~October 15, 2011~~. The amount due for the month: September 2011, due October 15, 2011 shall be paid no later than ~~October 15, 2011~~.  
January 30, 2012 if not already paid

2. BANISTER shall make all payments on the liquidated damages due and unpaid to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount of \$60,755.92 on or before October 1, 2012 as set forth below:

A. The TRUST FUNDS shall waive 50% of liquidated damages due \$30,377.96.

B. The remainder due in liquidated damages due and unpaid to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount of \$30,377.96 will be paid in twelve monthly payments. The first eleven payments will be in the amount of \$2,531.49. The first payment will be due on November 1, 2011. The final payment will be in the amount of \$2,531.57, and will be due on October 1, 2012.

3. IT IS FURTHER AGREED that BANISTER shall make payments of all ongoing amounts to become due to the Trust Funds pursuant to contract between BANISTER and Trust Funds for covered hours worked by defendant employees commencing with payment for October 2011 hours due on or before ~~November 15, 2011~~.  
January 30, 2012 if not already paid  
and continuing until the full amount of the reduced judgment as set forth below is paid. Checks will be made payable to the International Brotherhood of Electrical Workers Local 302 Employee Benefit Trust Fund and sent to Sue

Campbell: 1155 N. First St., Suite 218 San Jose, CA 95112.

4. IT IS FURTHER AGREED by the parties hereto that upon failure of the Defendant to make any of their monthly contribution payments pursuant to the collective bargaining agreement in the timely manner as required above in Section 2, and pursuant to the terms of this stipulation as set forth in Section 1 above, the stipulated judgment attached as Exhibit "A" shall be entered in the amount set forth below:

- A. The amount due in contributions for the month: June 2011 in the amount of \$14,187.04.
- B. The amount due in contributions for the month: July 2011 in the amount of \$12,945.14.
- C. Liquidated damages due and unpaid to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount of \$60,755.92 reduced by offsets for any payments made on the payment schedule.
- D. Attorney's fees due pursuant to contract in the amount of \$1,843.00.
- E. Costs of suit incurred in this action in the amount of \$350.00.
- F. All unpaid contributions for the months: August 2011 - September 2011.
- G. All unpaid contributions from October 2011 through September 2012, reduced by any offsets for payments made.

Said Judgment shall issue upon ten days written notice to BANISTER, upon the filing of a declaration by Trust Funds' attorney stating that a default has occurred.

Upon payment of Contributions for June 2011 - September 2011 and Liquidated damages due and unpaid to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount of \$30,377.96, the TRUST FUNDS shall file a Request for

1 Dismissal with prejudice in the lawsuit filed in the U.S. District Court, Northern District of  
 2 California, case number: 11-CV-00899 HRL entitled MIKE GELLER AND MIKE  
 3 YARBROUGH AS TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF  
 4 ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST  
 5 FUNDS vs. BANISTER ELECTRICAL, INC., A California Corporation and shall provide a file  
 6 endorsed copy of that Request for Dismissal via U.S. Mail to BANISTER ELECTRICAL, INC.,  
 7 A California Corporation At: 2532 Verne Roberts Circle Antioch, CA 94509.

8 This Stipulation covers the contributions due for June 2011 - September 2011 and  
 9 liquidated damages due to the Plaintiffs for the time periods: January - May 2010, July 2010,  
 10 March 2011, May 2011, only, and does not include any amounts for any other time period that  
 11 the collective bargaining agreement is in effect between the signatory parties. By entering into  
 12 this Stipulation, Trust Funds do not waive their right to audit the employer for the above time  
 13 period, or any other time period, and to collect through a subsequent legal action any additional  
 14 monies found by an audit to be delinquent because of unreported hours.

15 This agreement may be executed in multiple counterparts, each of which shall  
 16 constitute an original, and all of which taken together shall constitute one and the same  
 17 agreement.

18 In witness thereof, Plaintiff and Defendant have executed this stipulation for  
 19 judgment this 11<sup>th</sup> day of SEPTEMBER 2011, at San Jose, California.

20 BANISTER ELECTRICAL, INC., A  
 21 California Corporation

22 DATED: 9/19/11

23 By: [Signature]

I.B.E.W. LOCAL 302 EMPLOYEE  
BENEFIT TRUST FUNDS

DATED: 9-20-11

By: Michael W. Yarbrough

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Law Office of Sue  
Campbell  
1155 N. First St,  
Ste. 218  
San Jose, CA 95112

STIPULATION FOR ENTRY OF JUDGMENT  
No. CV11-0899 HRL



I.B.E.W. LOCAL 302 EMPLOYEE  
BENEFIT TRUST FUNDS

DATED: September 20, 2011

By: Michael Gillen

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Law Office of Sue  
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4 Attorney for Plaintiffs  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 MIKE GELLER AND MIKE YARBROUGH  
AS TRUSTEES OF THE INTERNATIONAL  
12 BROTHERHOOD OF ELECTRICAL  
WORKERS LOCAL 302 HEALTH AND  
WELFARE AND PENSION TRUST FUNDS,

13 Plaintiffs,  
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15 BANISTER ELECTRICAL, INC., A California  
Corporation,  
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17 Defendant.  
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CASE NO.: CV11-0899 HRL

JUDGMENT ON STIPULATION FOR  
ENTRY OF JUDGMENT

19 In the above-entitled cause, Plaintiffs MIKE GELLER AND MIKE  
20 YARBROUGH as trustees and fiduciaries of the INTERNATIONAL BROTHERHOOD OF  
21 ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST  
22 FUNDS and Defendant BANISTER ELECTRICAL, INC., A California Corporation, having  
23 stipulated that judgment be entered in favor of Plaintiff and against the Defendant in the sum of  
24 \$90,081.10.

25 IT IS ORDERED THAT Plaintiffs MIKE GELLER AND MIKE YARBROUGH  
26 as trustees and fiduciaries of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
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1 WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST FUNDS have  
 2 and recover judgment from BANISTER ELECTRICAL, INC., A California Corporation in the  
 3 amount of \$90,081.10 which is composed of the following:

- 4 A. The amount due in contributions for the month: June 2011 in the  
 5 amount of \$14,187.04.
- 6 B. The amount due in contributions for the month: July 2011 in the  
 7 amount of \$12,945.14.
- 8 C. Liquidated damages due and unpaid to the TRUST FUNDS for the  
 9 periods: January - May 2010, July 2010 - March 2011, May 2011  
 10 in the amount of \$60,755.92 reduced by offsets for any payments  
 11 made on the payment schedule.
- 12 D. Attorney's fees due pursuant to contract in the amount of \$1,843.00.
- 13 E. Costs of suit incurred in this action in the amount of \$350.00.
- 14 F. All unpaid contributions for the months: August 2011 - September  
 15 2011.
- 16 G. All unpaid contributions from October 2011 through September  
 17 2012, reduced by any offsets for payments made.

18 This judgment shall cover only the delinquent amounts for the time periods:  
 19 January - May 2010, July 2010 - March 2011, May 2011, and June - September 2011. The  
 20 judgment does not include any unknown amounts due to the Plaintiffs for the time periods:  
 21 January - May 2010, July 2010 - March 2011, May 2011, and June - September 2011, or for any

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1 other time period that the collective bargaining agreement is in effect between the signatory  
2 parties.

3 The judgment specifically does not waive the right of the Trust Funds to audit the  
4 employer for the above time period, or any other time period, and to collect any additional  
5 monies found to be delinquent as a result of an audit through a subsequent legal action.

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7 DATED: \_\_\_\_\_

8 HOWARD R. LLOYD  
9 United States Magistrate Judge  
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